IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 76-433

CLIFFORD F. FAVROT, JR., *Petitioner*

v.

KATHERINE BOULET BARNES, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	4
CONCLUSION	7
APPENDIX A — Marriage Contract Between Clifford F. Favrot, Jr. and Katherine Boulet, Divorced wife of J. Robert Barnes	9
APPENDIX B — Judgment and Opinion of the Twenty-Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana	11
APPENDIX C — Judgment and Opinion of the Louisiana Court of Appeal	15
APPENDIX D — Judgment and Opinion of the Supreme Court of the State of Louisiana	21
APPENDIX E — Petitioner's Petition for Writ of Review, filed in the Supreme Court of the State of Louisiana on 30 June 1976	23

INDEX — Continued

CITATIONS

	Page
CASES:	
Carole K. v. *Arnold K.*, 380 N.Y.S.2d 583 (1976)	6
Conway v. *Dana*, 318 A.2d 324 (Pa. 1973)	6
Dartmouth College v. *Woodward*, 4 Wheat 518, 4 L.Ed. 629 (1819)	5
Favrot v. *Barnes*, 332 So.2d 873 (La. App. 1976)	1
Frontiero v. *Richardson*, 411 U.S. 677 (1973)	5
Irving Trust Co. v. *Day*, 314 U.S. 556 (1942)	5
Reed v. *Reed*, 404 U.S. 71 (1971)	5
Stanton v. *Stanton*, 421 U.S. 7 (1975)	5
State ex rel. Watts v. *Watts*, 350 N.Y.S.2d 285 (1973)	6
Taylor v. *Louisiana*, 419 U.S. 522 (1975)	5
Williams v. *Williams*, 331 So.2d 438 (La. 1976)	3, 4, 6
STATUTES:	
Louisiana Civil Code Article 119	6
Louisiana Civil Code Article 160	2
Louisiana Civil Code Article 2325-2335	5
MISCELLANEOUS:	
Comment, *Male Alimony in Light of the Sex Discrimination Decisions of the Supreme Court*, 6 Cumberland L. Rev. 589 (Winter 1976)	5
Note, *Love Means Never Having to Say You're Suing*, 60 A.B.A.J. 628 (1974)	5

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

The petitioner, Clifford F. Favrot, Jr., respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Louisiana entered in this proceeding on 2 July 1976, refusing to review the judgment and opinion of the Louisiana Court of Appeal.

OPINIONS BELOW

The judgment and opinion of the Supreme Court of the State of Louisiana, not yet reported, appears in the Appen-

dix hereto. The judgment and opinion of the Louisiana Court of Appeal, reported at 332 So.2d 873 (1976), appears in the Appendix hereto. The judgment and opinion of the Twenty-Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana, appears in the Appendix hereto.

JURISDICTION

The judgment of the Supreme Court of the State of Louisiana was entered on 2 July 1976. No petition for rehearing was filed in the Supreme Court of the State of Louisiana. This Court's jurisdiction is invoked under 28 U.S. Code § 1257(3).

QUESTION PRESENTED

The question is whether the equal protection clause of the Fourteenth Amendment to the United States Constitution requires the State of Louisiana to permit persons to contract for sexual equality within marriage by eliminating the possibility of permanent alimony in favor of the female in the event the marriage fails. Here, it is not necessary to reach the broader issue of constitutionality of alimony for females only [*Williams* v. *Williams*, 331 So.2d 438 (La. 1976)]. It is sufficient if sexual equality gives the parties the right to limit by contract the obligation of financial support after termination of the marriage.

STATUTORY PROVISIONS INVOLVED

Louisiana Civil Code article 160 provides in divorce:

> If the wife who has obtained the divorce has not sufficient means for her maintenance, the Court may allow her in its discretion, out of the property and earnings of the husband, alimony which shall not exceed one-third of his income . . . .

Although the above statute provides alimony for members of the female sex only, the Supreme Court of Louisiana has held the statute constitutional. *Williams* v. *Williams*, 331 So.2d 438 (1976).

STATEMENT OF THE CASE

Petitioner, Clifford F. Favrot, Jr., and respondent, Katherine Boulet Barnes, were married 15 July 1965. It was the second marriage for each; both parties are middle aged; the marriage was as much for convenience as for love.

Before marrying, the parties entered into a Marriage Contract specifically waiving "each and every right which he or she might have to make any claim to the property of the other either during the existence of the marriage between them or in the event of its dissolution." The marriage failed. A final judgment of absolute divorce ultimately was rendered on 3 March 1975. In that judgment, a copy of which appears in the Appendix, Mrs. Favrot was awarded permanent alimony in the amount of $800.00 per month.

Mr. Favrot appealed to the Louisiana Court of Appeal, and won a reversal on the grounds that there was no showing that Mrs. Favrot is unable to support herself by working. The decision of the Court of Appeal, however, left the door open for Mrs. Favrot to return to the trial court to obtain permanent alimony. The Court of Appeal expressly rejected Mr. Favrot's contention that permanent alimony is absolutely precluded by the marriage contract.

Both Mr. Favrot and Mrs. Favrot (Katherine Boulet Barnes) petitioned the Supreme Court of Louisiana for

review. The state supreme court denied Mr. Favrot's petition, but granted a writ of review to Mrs. Favrot. The question of whether an able-bodied woman may collect alimony is still pending in the Supreme Court of Louisiana on Mrs. Favrot's writ.

Mr. Favrot now petitions the Supreme Court of the United States for a writ of certiorari, assigning as sole error the refusal of the Louisiana courts to recognize the validity of a marriage contract waiving permanent alimony where such contract is entered into in a state that awards alimony to members of the female sex only.

REASONS FOR GRANTING THE WRIT

In these enlightened times of equal employment opportunity and of sexual equality under the equal protection clause, alimony for females only seems sadly anachronistic. Comment, *Male Alimony in Light of the Sex Discrimination Decisions of the Supreme Court*, 6 Cumberland L. Rev. 589 (Winter 1976).

Perhaps Louisiana's sexist standard passes constitutional muster under the Fourteenth Amendment. *Williams* v. *Williams*, 331 So.2d 438 (La. 1976). But, if so, surely the parties to a marriage should be able to contract for sexual equality within their particular marriage by agreeing that, in the event the marriage fails, neither party shall be entitled to permanent alimony.

> Changes in society's views towards the husband-wife relationship should prompt more interest in these agreements. A contract altering the husband's duty of support should have a more receptive audience today than just a few years ago.

> Note, *Love Means Never Having to Say You're Suing*, 60 A.B.A.J. 628 (1974).

There is nothing about marriage contracts *per se* repugnant to Louisiana law. Such contracts specifically are permitted by Louisiana Civil Code articles 2325 through 2335.

In *Irving Trust Co.* v. *Day*, 314 U.S. 556, 561 (1942), this honorable Court held:

> When this Court is asked to invalidate a state statute upon the grounds that it impairs the obligation of a [marriage] contract, the existence of the contract and the nature and extent of its obligation become federal questions for the purposes of determining whether they are within the scope and meaning of the Federal Constitution, and for such purposes finality cannot be accorded to the views of a state court.
>
> *Irving Trust Co.* v. *Day*, 314 U.S. 556, 561 (1942).

See also Dartmouth College v. *Woodward*, 4 Wheat 518, 693-697, 4 L.Ed. 629, 673-674 (1819) (Story, J., concurring), *accord*, majority opinion, *id.* at 629, 4 L.Ed. at 675.

Today, the equal protection clause of the Fourteenth Amendment prohibits unreasonable discrimination based on sex. *Stanton* v. *Stanton*, 421 U.S. 7 (1975); *Taylor* v. *Louisiana*, 419 U.S. 522 (1975); *Reed* v. *Reed*, 404 U.S. 71 (1971); *Frontiero* v. *Richardson*, 411 U.S. 677 (1973); Comment, *Male Alimony in Light of the Sex Discrimination Decisions of the Supreme Court*, 6 Cumberland L. Rev. 590 (Winter 1976). See also the enlightened decisions of several state courts applying the Fourteenth Amendment to the domestic relations situation as mandating sexual equality

in divorce: *Conway* v. *Dana*, 318 A.2d 324, 326 (Pa. 1973), *State ex rel. Watts* v. *Watts*, 350 N.Y.S.2d 285 (1973), and *Carole K.* v. *Arnold K.*, 380 N.Y.S.2d 583 (1976), in which Judge Nanette Dembitz observes that "sexual generalization in the law of support is the quintessence of unconstitutionality."

In particular, compare the constitutional reasoning of the Pennsylvania Supreme Court in *Conway* v. *Dana*, 318 A.2d 324 (Pa. 1973), with the conflicting reasoning of the Louisiana Supreme Court in *Williams* v. *Williams*, 331 So. 2d 438 (1976). The conflict between the states deserves to be put to rest.

Assume arguendo that the sexist standard of Louisiana Civil Code article 160, giving alimony only to members of the female sex, does no violence to the federal constitution. Still, developing concepts of sexual equality require that the parties at least be permitted to modify that sexist obligation by contract. In the case at bar, Clifford F. Favrot, Jr. and his ex-wife both were in late middle age when they got married. Theirs was a marriage of convenience. Surely a man of means is entitled to protect himself against the prospect of a ripoff on the installment plan, of economic servitude for the remainder of his natural days, in the event the marriage fails. During a marriage, the state has a legitimate interest in providing that: "The husband and wife owe to each other mutually, fidelity, support and assistance." Louisiana Civil Code article 119. But, when the party is over, the party is over.

In the instant case it is not necessary to reach the broader issue of constitutionality of alimony for females only. Here, it is sufficient if sexual equality gives the parties the right to limit by contract the obligation of financial support after termination of a childless marriage.

To deny such right is to characterize women as witless, helpless creatures incapable of fending for themselves and in no case permitted to enter into marriage on terms of equality with the male — not even by express agreement!

CONCLUSION

The question squarely presented here is not whether alimony is unconstitutional, not whether parties may contract away their obligations of mutual support during the existence of a viable relationship. Rather, the question is whether Louisiana must emerge from the dark ages, not to force sexual equality upon those who do not want it, but instead to recognize the rights of particular persons to contract for sexual equality within their particular marital situations.

For this reason, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Louisiana.

Respectfully submitted,

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Counsel for Petitioner

APPENDIX A

MARRIAGE CONTRACT BETWEEN CLIFFORD F. FAVROT, JR. AND KATHERINE BOULET, Divorced wife of J. ROBERT BARNES	United States of America State of Louisiana Parish of Jefferson

BE IT KNOWN that on this 12th day of July, in the year of Our Lord one thousand nine hundred and sixty-five,

BEFORE ME, David J. Conroy, a Notary Public, duly commissioned and qualified, in and for the Parish of Jefferson, State of Louisiana, therein residing, and in the presence of the witnesses hereinafter named and undersigned:

PERSONALLY CAME AND APPEARED: Clifford F. Favrot, Jr., of the Parish of St. Tammany, State of Louisiana, and Katherine Boulet, divorced wife of J. Robert Barnes, of the Parish of Jefferson, State of Louisiana, both of full age, who severally declared that they do plan and intend to be joined in the bonds of matrimony on July 15, 1965, at New Orleans, Louisiana, and in order to fix certain rights between them, they do contract as follows, to-wit:

I

The said intended husband and wife shall be separate in property. Accordingly, they hereby formally renounce those provisions of the Revised Civil Code which establish a community of acquets and gains between husband and wife.

II

All property and effects of the said husband and wife, whether owned by him or her at the time of the celebration of said intended marriage, or acquired during said marriage, are hereby declared to be separate property, and they and each of them do hereby expressly reserve to themselves individually the entire administration of their respective particular movable and immovable property, and the respective free enjoyment of each of their revenues.

III

Each of the parties hereto does specifically waive each and every right which he or she might have to make any claim to the property of the other either during the existence of the marriage between them or in the event of its dissolution by death or otherwise; provided, however, that if the agreement contained in this paragraph shall for any reason and to any extent be invalid it shall, insofar as it is invalid, be disregarded and the remainder of this contract shall be effective to the same extent as if this paragraph No. III had not been written to apply to any situation which would render it invalid.

THUS DONE AND PASSED, in quintuplicate originals, in Jefferson Parish, Louisiana, on the day, month and year herein first above written, in the presence of Anne W. Montgomery and Ann K. Conroy, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading of the whole.

WITNESSES:

Anne W. Montgomery — Clifford F. Favrot, Jr.

Ann K. Conroy — Katherine Boulet

David J. Conroy
Notary Public

APPENDIX B

PARISH OF JEFFERSON
STATE OF LOUISIANA

No. 161-675

DIVISION "B"

CLIFFORD F. FAVROT, JR.

VERSUS

KATHERINE BOULET BARNES, wife of
CLIFFORD F. FAVROT, JR.

FILED: March 3, 1975 — W. P. Gaudet, Jr.
Deputy Clerk

JUDGMENT

This matter came for trial on the merits for CLIFFORD F. FAVROT, JR.'s petition for divorce, KATHERINE BOULET BARNES, reconventional demand, praying for permanent alimony and CLIFFORD F. FAVROT, JR.'s exception of no right or cause of action.

PRESENT: D. DOUGLAS HOWARD, JR.,
Attorney for/and
KATHERINE BOULET BARNES,
wife of
CLIFFORD F. FAVROT, JR.

EUGENE BRIERRE,
Attorney for/and
CLIFFORD F. FAVROT, JR.

When, after hearing the pleadings, evidence and argument of counsel, the Court considering the law and the evidence to be in favor of Defendant and Plaintiff in Reconvention, KATHERINE BOULET BARNES, wife of CLIFFORD F. FAVROT, JR., for the reasons orally assigned:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the Defendant and Plaintiff in Reconvention, KATHERINE BOULET BARNES, wife of CLIFFORD F. FAVROT, JR., granting a divorce "a vinculo matrimonii", forever dissolving the bonds of matrimony heretofore existing between them.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the pre-emptory exception of no right or cause of action filed by Plaintiff and Defendant in reconvention, CLIFFORD F. FAVROT, JR., be and is hereby dismissed, in that its merits are without foundation in Louisiana Law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Plaintiff in Reconvention, KATHERINE BOULET BARNES, wife of CLIFFORD F. FAVROT, JR., is found to be without fault within the meaning of La. Civil Code, Article 160, and that, accordingly, Plaintiff and Defendant in Reconvention, CLIFFORD F. FAVROT, JR., be condemned to pay permanent alimony to his wife, KATHERINE BOULET BARNES, in the amount of EIGHT HUNDRED AND NO/100 ($800.00) DOLLARS per month, due and payable on February 12, 1975, and on the first of each succeeding month thereafter.

Judgment read and rendered in open Court on the 12th day of February, 1975.

Judgment signed in open Court on this 3rd day of March, 1975.

F. V. ZACCARIA
Judge

A true copy of the original on file in this office.

W. P. GAUDET, JR.
Deputy Clerk
24th Judicial District Court
Parish of Jefferson, La.

APPENDIX C

CLIFFORD F. FAVROT, JR. vs. KATHERINE BOULET BARNES	No. 7313 Court of Appeal Fourth Circuit State of Louisiana

APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON, STATE OF LOUISIANA, No. 161-675, DIVISION B, HONORABLE FRANK V. ZACCARIA, JUDGE

WILLIAM V. REDMANN
JUDGE

May 18, 1976

(Court composed of Judges William V. Redmann, John C. Boutall and Patrick M. Schott)

MAURICE R. FRANKS for Plaintiff-Appellant

D. DOUGLAS HOWARD, JR. (Rudman & Howard) for Defendant-Appellant

SET ASIDE AND REMANDED

An ex-husband appeals from an alimony award as unwarranted and, alternatively, excessive. Because this court en banc has today decided that an ex-wife must show circumstances which make her unable to support herself by working before she can obtain post-divorce alimony, Ward v. Ward, La.App. 1976, 332 So.2d 868, we remand to allow the parties to present evidence on this point.

ENTITLEMENT

This prospective husband and wife, in middle age, had each been married before. They executed a pre-marital agreement stipulating separateness of property. We first reject the husband's argument that the agreement's waiver by each of every "claim to the property" of the other in case of divorce or death is a waiver of alimony. If public policy were to allow such a waiver, this agreement does not constitute one. Alimony to a divorced wife is not a "claim to the property" of the husband; it is a claim against the husband, limited by his "income", C.C. 160.

The spouses had other pre-marital discussions in which, at the husband's instance, they agreed to limit sexual intercourse to about once a week. The husband asserts, as divorce-causing fault, that the wife did not keep this agreement but sought coitus thrice daily. The wife testifies she kept their agreement despite her frustration at not being "permitted" at other times even to touch her husband.

We reject the view that a pre-marital understanding can repeal or amend the nature of marital obligations as declared by C.C. 119: "The husband and wife owe to each other mutually, fidelity, support and assistance." Marriage obliges the spouses to fulfill "the reasonable and normal sex desires of each other." *Mudd* v. *Mudd*, 1944, 206 La. 1055, 20 So.2d 311. It is this abiding sexual relationship which characterizes a contract as marriage, *Phillpott* v. *Phillpott*, La.App. 1973, 285 So.2d 570, writ refused 288 So.2d 643, rather than, e.g., domestic employer-employee, or landlord-tenant. Persons may indeed agree to live in the same building in some relationship other than marriage. But that is not what our litigants did. They married.

The law does not authorize contractual modification of the "conjugal association" except "[i]in relation to property," C.C. 2325. C.C. 2327 prohibits alteration of marriage like that agreed to here which the wife allegedly breached: "Neither can husband and wife derogate by their matrimonial agreement from the rights resulting from the power of the husband over the person of the wife . . . ." Nor — because the rights over the person are largely mutual, C.C. 119 and La. Const. art. 1 § 3 — can their matrimonial agreement derogate from the power of the wife over the person of her husband.

The fault here alleged by the husband is not, in law, any fault.

The husband also finds fault in the wife's not having sufficiently disciplined her daughter by a previous marriage. There appears to have been a personality conflict between husband and daughter, which resulted in the wife's awesome decision to send her teen-age daughter out of her home to placate the husband. The daughter was away from home for almost all of the last year and a half of marriage. The wife's behavior regarding her daughter was far from fault towards the husband.

We find no fault which would defeat the ex-wife's entitlement to alimony.

The husband further argues that the wife, who taught school before the marriage, is able to support herself and therefore is not entitled to alimony. To the extent that an ex-wife's earnings are "sufficient means for her support", C.C. 160, the husband cannot be required to provide alimony. Therefore an ex-wife's quitting or refusing reasonable employment cannot oblige the ex-husband to provide her with the maintenance money that quit or refused employment would provide. Despite pre-*Ward* cases' having ignored the question, the ex-wife's burden of proving lack

of means includes, at least since Louisiana's 1974 Constitution, proving circumstances that prevent her from supporting herself by working. Louisiana law does not allow an ex-husband to escape an alimony obligation by refusing to work; *Zaccaria* v. *Beoubay*, 1948, 213 La. 782, 35 So.2d 659; *Viser* v. *Viser*, La.App. 1965, 179 So.2d 673; *Rakosky* v. *Rakosky*, La.App. 1973, 275 So.2d 421. Constitutional principles of justice administered without partiality, La. Const. art. 1 § 22, and against unreasonable discrimination because of sex, art. 1 § 3, oblige us to rule that an ex-wife cannot create an alimony obligation by unjustifiably refusing to work.

This new interpretation of C.C. 160, however, was not known to this ex-wife at time of trial. To reject her claim for lack of proof on this point would be unfair — just as it would be unfair to the ex-husband to hold that the wife's passing references to unavailability of a teaching post and to an arthritis condition sufficed to prove both that the wife cannot find work as a teacher and that she physically cannot do other work. We are opposed to either affirming or reversing the grant of alimony under the circumstances, in view of the rule that a change in circumstances must ordinarily be shown in order to change an alimony fixing, *Bernhardt* v. *Bernhardt*, La. 1973, 283 So.2d 226. Under C.C.P. 2164's authority for any judgment that is just and proper on the record, we elect to remand so that the parties may introduce evidence on the wife's ability to support herself.

AMOUNT

Because we set aside and remand we cannot rule on the correctness of the amount fixed. We do note, however, that the husband's argument that the alimony obligation is only for food, clothing and shelter is rejected by *Bernhardt*, *supra*.

OTHER

The husband sought by rule to compel the wife to sign joint income tax returns for 1972 through 1974. The rule was dismissed July 2, 1975, long after this April 4 appeal from another judgment. This is not a case of a delayed signing of an announced judgment, as in *Richards* v. *Gettys*, La. App. 1976, 329 So.2d 475. This appeal was not taken from any ruling on the signing of the returns.

Set aside and remanded.

APPENDIX D

SUPREME COURT OF LOUISIANA

NEW ORLEANS, 70112

CLIFFORD F. FAVROT, JR.

v.

KATHERINE BOULET BARNES

July 2, 1976

No. 58,274

In re: Clifford F. Favrot, Jr. applying for certiorari or writ of review to the Court of Appeal, Fourth Circuit, Parish of Jefferson

Writ denied.

No merit in the assignment of error.

/s/ WFM
/s/ AT Jr.
/s/ JAD
/s/ PFC
/s/ JLD

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans, July 2, 1976
/s/ Phil Trice
Deputy Clerk

APPENDIX E

SUPREME COURT OF LOUISIANA

No. 58,274

CLIFFORD F. FAVROT, JR.,
Plaintiff and Petitioner

vs.

KATHERINE BOULET BARNES,
Defendant and Respondent

PETITION FOR WRIT OF REVIEW TO THE COURT OF APPEAL, FOURTH CIRCUIT, PARISH OF JEFFERSON, No. 7313

PETITION FOR WRIT OF REVIEW

SUPREME COURT OF LOUISIANA
Filed June 30, 1976
Harold A. Moise, Jr., Clerk

MAURICE R. FRANKS
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The Petition of Clifford F. Favrot, Jr., plaintiff in the action entitled *Clifford F. Favrot, Jr.* v. *Katherine Boulet Barnes*, number 161-675 on the docket of Division B of the Twenty-Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana, and appellant in case number 7313 on the docket of the Court of Appeal, Fourth Circuit, State of Louisiana, respectfully shows:

STATEMENT OF THE CASE

Petitioner, Clifford F. Favrot, Jr., and respondent, Katherine Boulet Barnes, were married 15 July 1965. It was the second marriage for each; both parties are middle aged; the marriage was as much for convenience as for love.

Before marrying, the parties entered into a Marriage Contract renouncing the community and specifically waiving "each and every right which he or she might have to make any claim to the property of the other either during the existence of the marriage between them or in the event of its dissolution." The marriage failed. A final judgment of absolute divorce ultimately was rendered, on 3 March 1975. In that judgment, Mrs. Favrot was awarded permanent alimony in the amount of $800.00 per month.

Mr. Favrot appealed to the Fourth Circuit, and won a reversal on the grounds that there was no showing that Mrs. Favrot is unable to support herself by working. The decision of the Court of Appeal, however, still leaves the door open for Mrs. Favrot to return to the trial court and obtain permanent alimony. The Court of Appeal expressly rejected petitioner's contention that permanent alimony is absolutely precluded by the marriage contract. Mr. Favrot now petitions for a Writ of Review, assigning as sole error the refusal of the Court of Appeal to recognize the validity of the marriage contract.

GROUNDS ON WHICH JURISDICTION IS INVOKED

This honorable court has jurisdiction pursuant to Louisiana Constitution, Article V, § 5(C) and (F).

ISSUE AND QUESTION OF LAW INVOLVED

The question is whether the equal protection clause of the Fourteenth Amendment to the United States Constitution requires the State of Louisiana to permit persons to contract for sexual equality within the marriage by eliminating the possibility of permanent alimony in the event the marriage fails. Here, it is not necessary to reach the broader issue of constitutionality of alimony for females only. It is sufficient if sexual equality gives the parties the right to limit by contract the obligation of financial support after termination of the marriage.

ASSIGNMENT OF ERROR

The distinguished Court of Appeal erred in failing to hold that the marital contract is valid, and that in these enlightened times of equal employment opportunity and of sexual equality under the equal protection clause of the Fourteenth Amendment to the United States Constitution a marriage contract may effectively preclude an award of permanent alimony.

ARGUMENT ON ASSIGNMENT OF ERROR

Changes in society's views towards the husband-wife relationship should prompt more interest in these agreements. A contract altering the husband's duty of support should have a more receptive audience today than just a few years ago. Note, *Love Means Never Having to Say You're Suing*, 60 A.B.A.J. 628 (May, 1974).

The equal protection clause of the Fourteenth Amendment to the United States Constitution, as well as Louisiana Constitution, Article 1, § 3, prohibits discrimination based on sex. *Stanton* v. *Stanton*, 95 S.Ct. 1373 (1975); *Taylor* v. *Louisiana*, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975); *Reed* v. *Reed*, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971); *Frontiero* v. *Richardson*, 411 U.S. 677, 682, 93 S.Ct. 1764, 1768, 36 L.Ed.2d 583, 589 (1973). Assume arguendo that the sexist standard of Louisiana Civil Code article 160, giving alimony only to members of the female sex, does no violence to the Louisiana or federal constitutions. Still, developing concepts of equality require that the parties at least be permitted to modify that sexist obligation by contract. In the case at bar, Clifford F. Favrot, Jr. and his ex-wife both were in middle age when they got married. Theirs was a marriage of convenience. Surely a man of Mr. Favrot's means is entitled to protect himself against the prospect of a ripoff on the installment plan, of economic servitude for the remainder of his natural days, in the event the marriage fails to work. During a marriage, it is true: "The husband and wife owe to each other mutually, fidelity, support and assistance." Louisiana Civil Code article 119. But when the party is over, the party is over.

Leading jurisdictions already have held that equal employment opportunity carries with it equal support responsibility. *Conway* v. *Dana*, 318 A.2d 324, 326 (Pa. 1974); *Carole K.* v. *Arnold K.*, 380 N.Y.S.2d 583 (1976); *cf. State ex rel. Watts* v. *Watts*, 350 N.Y.S.2d 285 (1973); Note, *Male Alimony in Light of the Sex Discrimination Decisions of the Supreme Court*, 6 Cumberland L. Rev. 589 (Winter 1976). See also M. Franks, *Federal Relief for Male Divorce Litigants*, 80 Case & Comment 14 (May-June 1975).

But in the instant case it is not necessary to reach the broader issue of constitutionality of alimony for females

only. Here, it is sufficient if sexual equality gives the parties the right to limit by contract the obligation of financial support after termination of the marriage. To deny such right is to characterize women as witless, helpless creatures incapable of looking out for themselves and in no case permitted to enter into marriage on terms of equality with the husband — not even by express agreement.

The "adhesion contract" of marriage thrust upon the parties by the State in the absence of a wrtten contract is one thing — even though it discriminates against women by stereotyping them as recipients of alimony. Persons not entering into a written marital contract, but not doing so, conceivably elect to accept that "adhesion contract." But to prohibit persons from contracting otherwise, to deny them the right to sexual equality within the marriage by eliminating the possibility of permanent alimony either to man or to woman in the event the marriage fails, is another thing — and one that seems sadly out of step with these enlightened times.

CONCLUSION

The question squarely presented here is not whether alimony is unconstitutional, not whether parties may contract away their obligations of mutual support during the existence of a viable relationship. Rather, the question is whether Louisiana is yet ready to emerge from the dark ages, not to force sexual equality upon those who do not want it, but instead to recognize the rights of particular persons to contract for sexual equality within their peculiar marital situations.

PRAYER

Plaintiff and petitioner, Clifford F. Favrot, Jr., respectfully prays that this honorable court issue a writ of

review, directed to the distinguished Court of Appeal, Fourth Circuit, State of Louisiana, commanding the said court to send to this court a certified copy of the proceedings entitled *Clifford F. Favrot, Jr.* v. *Katherine Boulet Barnes*, number 7313 on the docket of the said court and number 161-675 on the docket of the Twenty-Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana, to the end that ther validity may be ascertained; that the opinion and judgment of the Court of Appeal, Fourth Circuit, State of Louisiana, be reversed, to the end that petitioner's marriage contract be recognized and that respondent be denied permanent alimony on the basis of the said marriage contract. Petitioner further prays for all necessary writs and orders.

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